STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MAXINE ADRIEONA SIEKIERK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JUSTIN SIEKIERK,

Respondent-Appellant,

and

TYSIA K. PLUMMER,

Respondent.

UNPUBLISHED
February 24, 2009

No. 286299
Isabella Circuit Court
Family Division
LC No. 07-000150 NA

In the Matter of MAXINE ADRIEONA SIEKIERK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TYSIA K. PLUMMER,

Respondent-Appellant,

and

JUSTIN SIEKIERK,

No. 286300
Isabella Circuit Court
Family Division
LC No. 07-000150-NA

Respondent.

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right an order terminating their parental rights to their minor child under MCL 712A.19b(3)(g) and (j), and additionally, MCL 712A.19b(3)(m) with regard to respondent mother. Because the trial court did not err in finding that the grounds for termination were proven by clear and convincing evidence, and there was no showing that termination is clearly not in the best interests of the child, we affirm.

Maxine was removed from respondents' care at the hospital following her birth in August 2007. She was respondent mother's fourth child and respondent father's first. Respondents had been working with Isabella County Community Mental Health and other service providers, because respondent mother hoped to regain custody of her older children, Oscar and Loura, who were in guardianship with respondent mother's sister. Oscar and Loura were removed from the home they shared with respondent mother and father in 2005 because of filthy, unsanitary home conditions and allegations of abuse by both respondent father and respondent mother's ex-husband (the children's father). Respondent mother was twice convicted of truancy for allowing Oscar and Loura to miss too many school days without valid excuses and Oscar and Loura each had to repeat kindergarten. Psychological evaluations performed on respondents in 2005 and 2007 indicated that both had borderline intellectual capacity and emotional issues, which presented concerns about whether they would be able to safely parent a child. Respondents' parent agency agreement with respect to Maxine required improvements in parenting and communication skills, domestic relations, emotional stability, and resource management.

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the child. *Id.* at 364-365; MCL 712A.19b(5). This Court reviews the trial court's findings under the clearly erroneous standard. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); MCR 3.977(J).

Respondent father argues that the state prematurely terminated his parental rights on a theory of anticipatory neglect. Under the doctrine of anticipatory neglect, how a parent treats one child, including a child not his own, is probative of probable future treatment of another child. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Powers*, 208 Mich App 582, 588-593; 528 NW2d 799 (1995). Here, there was evidence that respondent father not only mistreated Oscar and Loura but also savagely attacked respondent mother while she was sleeping.

In October 2007, while this case was pending, respondent father, after drinking alcohol, tumbled respondent mother off a couch and beat her on the back with a wooden table. Her

injuries required hospitalization. Respondent father later pleaded nolo contendere to attempted felonious assault regarding the incident. The evidence also established that respondent had limited intellectual functioning and had difficulty grasping and remembering the most basic functions of taking care of Maxine. For example, he had to be told repeatedly how to hold her and safely buckled in a car seat. According to the psychological evaluation, respondent father had judgment and decision making problems in his daily functioning and had some difficulty managing anger and stress. He was undergoing treatment for his anger, but given his cognitive limitations, history of violence, and frustration and anger at visitation supervisors who tried to help him with parenting skills, we find no clear error in the trial court's determination that a small child would be at risk in his care. A parent must not simply cooperate with, but must actually benefit from services in order to be found compliant with a case service plan. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Respondent father also claims that the trial court erred reversibly in denying his motion for testing for Fragile X syndrome. Because the psychologist who noted that respondent father met the criteria for Fragile X also wrote that the condition was caused by a genetic mutation and was not treatable and that respondent had substantial limitations regardless of the condition, whether respondent father had the syndrome or not was irrelevant. We thus find no reversible error on this issue.

Respondent father finally argues that he was denied equal protection and treated differently than female parents because DHS did not consider placing Maxine with his father and placed her instead with respondent mother's half-sister, citing an unwritten "policy" to place children with siblings when possible. Discrimination on the basis of sex is prohibited by Michigan's Elliott-Larsen Civil Rights Act, MCL 37.2102(1) (and federal civil rights laws). Respondent father, however, provided no evidence that he was denied services or treated differently by DHS or service providers on the basis of sex. The caseworker testified that DHS had a neutral policy of placing children with siblings whenever possible. Further, respondents had both stated that they favored placing Maxine with Oscar and Loura, and respondent father did not seek placement with he and his father until late in the case. We find no reversible error.

Respondent mother argues that the evidence was insufficient to terminate her parental rights under MCL 712A.19b(3)(g) and (j). We disagree. Initially, we note that termination was clearly appropriate under MCL 712A.19b(3)(m), since respondent mother voluntarily released her rights to an older child, Tyrickia, after child protective proceedings were instituted. Only one statutory ground need be proven by clear and convincing evidence to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Under subsection (g), the doctrine of anticipatory neglect could be used to predict neglect of Maxine based on prior treatment of Tyrickia, Oscar, and Loura. Subsection (j) was also satisfied, as several psychologists opined that without extensive, intensive, long-term services, Maxine would be at risk in respondent mother's care. Also, respondent mother contemplated returning to respondent father, despite the fact that he had physically abused her and exposed her older children to violence. Clearly, respondent mother did not understand the dynamics of domestic violence, which would put Maxine at risk. Neglect can be shown when a parent permits an abusive environment to continue. *In re Rinesmith*, 144 Mich App 475, 483-484; 376 NW2d 139 (1985), abrogated on other grounds, *People v LaLone*, 432 Mich 103; 437 NW2d 611 (1989). Respondent mother's ex-husband had also abused her savagely and repeatedly. The trial

court's findings under subsections (g), (j), and (m) were supported by the evidence and not clearly erroneous.

Finally, we find no clear error in the court's ruling that termination of respondents' parental rights was not clearly contrary to Maxine's best interests. MCL 712A.19b(5); *Trejo, supra* at 353. Both parents loved Maxine very much, and Maxine and respondent mother were bonded. However, both parents had great difficulty learning basic tasks such as feeding, diapering, and supporting the baby's neck and back while holding her. Respondent father especially could not read Maxine's cues and continuously moved her around or changed activities, causing her to cry. His history of violence and anger-fueled crimes was extremely problematic. Both respondents' cognitive limitations meant that learning did not transfer to new or slightly different situations. As Maxine grew, respondents together or individually would require intensive, sustained services and help to provide appropriate care for her. After reviewing the entire record, we are not left with a definite and firm conviction that a mistake was made in terminating respondents' parental rights to the minor child. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Affirmed.

/s/ David H. Sawyer
/s/ Deborah A. Servitto
/s/ Michael J. Kelly